

Court of Appeals, State of Michigan

ORDER

People of MI v Khalil Chahine

Docket No. 260932

LC No. 04-007133

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

The Court orders that the motions for immediate consideration and to waive the stay requirement of providing the transcript are GRANTED.

In lieu of granting leave to appeal, the September 17, 2004 and January 28, 2005 orders entered by the Wayne Circuit Court are REVERSED. The trial court erred in granting defendant's motion to quash the charge of assault with intent to murder, MCL 750.83. The evidence showed that defendant fired a gun toward a vehicle containing two occupants in the front seat. The intentional discharge of a firearm at someone within range, done under circumstances that did not justify, excuse, or mitigate the crime, is sufficient to prove assault with intent to commit murder. *People v Lipps*, 167 Mich App 99, 105; 421 NW2d 586 (1988); *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). Although defendant may have been targeting only the driver and may not have been aware of the passenger, it is only necessary that the requisite state of mind exist, not that it be directed at any particular person. *People v Lawton*, 196 Mich App 341, 350-351; 492 NW2d 810 (1992).

The trial court abused its discretion in granting defendant's motion in limine to admit a confederate's statement under MRE 804(b)(3). Although the declarant is unavailable, his statement did not tend to subject him to criminal liability. He admitted firing the gun at issue but stated both that he lacked the specific intent to commit either crime and that he acted in self-defense. The declarant is out of the country and due to the absence of an extradition treaty between the United States and Lebanon, he is unlikely to be prosecuted here. While defendant contends that the declarant is being prosecuted for the same offense in Lebanon, the only evidence of this is hearsay that has not been shown to be admissible. Therefore, the declarant's statement did not so far tend to subject him to criminal liability that a reasonable person in his position would not have made it unless believing it to be true. *People v Barrera*, 451 Mich 261, 270-272; 547 NW2d 280 (1996). In addition, the declarant's statement has not been shown to be trustworthy. Although there is no dispute that the declarant made the statement voluntarily, all other factors relevant to corroboration preponderated against a finding of trustworthiness. *Id.* at 273-275, 289.

The motion for stay is DENIED as moot. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 15 2005

Date

Sandra Schultz Mengel
Chief Clerk